

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASE NO.: _____

ATOS IT SOLUTIONS & SERVICES, INC.

Plaintiff,

v.

ANGIEL ELECTRICAL CONSTRUCTION
CORPORATION, EATON CORPORATION
and SUMMIT ELECTRIC SUPPLY CO., INC.,

Defendants.

COMPLAINT

Plaintiff Atos IT Solutions & Services, Inc. (“Plaintiff” or “Atos”) files this Complaint against Angiel Electrical Construction Corporation (“Angiel”), Eaton Corporation (“Eaton”) and Summit Electric Supply Co., Inc. (“Summit”) (collectively, “Defendants”) and alleges as follows:

INTRODUCTION

1. This is a lawsuit filed to redress injuries that Plaintiff has suffered as a result of Defendants’ breach of contract and negligence.
2. Atos is a global European information technology services corporation with its North American headquarters located in New York, and IT offices located throughout the United States. Atos provides technology consulting services, systems integration services, unified communications services, as well as cloud, big data, and cybersecurity services. Atos has an IT office in Texas and a Data Center in Arlington, Texas.

3. The City San Diego, California is one of Atos's clients serviced by the Arlington, Texas Data Center.

4. Defendant Angiel Electrical Construction Corporation is an electrical contractor with its headquarters located in Dallas, Texas. Angiel performs electrical contracting services including construction, service upgrades and installations.

5. Defendant Eaton Corporation is an international power management company with its North American corporate headquarters located in Ohio. Eaton manufactures electrical devices such as circuit breakers and power systems, hydraulic systems, and components used in mobile and industrial applications.

6. Defendant Summit Electric Supply Co., Inc. is an independent wholesale distributor of industrial electrical equipment and supplies. Summit is headquartered in New Mexico and has fifteen service center locations throughout Texas.

7. As set forth in more detail below, in April 2013, Plaintiff contracted with Angiel to refurbish its generator main breaker for its Arlington, Texas Data Center. Through Angiel, Plaintiff requested the reconditioning of a faulty Westinghouse power circuit breaker from Defendant Eaton. Defendant Summit was contracted by Defendant Eaton to refurbish the defective power circuit breaker for Plaintiff.

8. Several months later, in December 2013, it was discovered that the power circuit breaker refurbished by Eaton at the Atos Data Center did not close. Eaton's technician support was called to assist Angiel with the issue at Atos. Eaton then contacted Summit to request a technician to go to the Atos Data Center to troubleshoot the problems with the rebuilt power circuit breaker.

9. After nearly a month of troubleshooting the issue, Defendants still had not successfully fixed the power circuit breaker at the Atos Data Center. On February 12, 2014, Eaton advised Angiel that the power circuit breaker issue had been resolved and the issues had stemmed from a defective switch in the breaker.

10. Two weeks later, on February 26, 2014, it was discovered that Defendant Eaton had set the power circuit breaker to minimum settings, not according to the original settings, causing the entire Atos Arlington Data Center to be “dumped” and triggering a far-reaching power outage.

11. The data dump and power outage in Plaintiff’s Arlington Data Center, caused by Defendants, have significantly harmed Plaintiff. Plaintiff has incurred \$647,519.00 for necessary time in restoring the dumped systems, \$289,474.98 for required service level credits extended to customers, \$35,000.00 in damages to customer, Republic, and \$299,241.08 to the City of San Diego as a direct result of the power outage caused by Defendants. In total, Plaintiff has at least \$1,271,235.06 worth of damages caused directly by Defendants and the failure of the breaker.

PARTIES, JURISDICTION AND VENUE

12. Plaintiff Atos IT Solutions & Services, Inc. (“Atos”) is a wholly-owned subsidiary of Atos SE, a société européenne (public limited company) incorporated under French law. Atos is incorporated in Delaware and has a registered office located at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

13. Defendant Angiel is incorporated in Texas and has a registered office located at 9030 Directors Row, Dallas, Dallas County, Texas 75247.

14. Defendant Eaton Corporation is incorporated in Ohio and has a registered office located at 1999 Bryan Street, Suite 900, Dallas, Dallas County, Texas 75201.

15. Defendant Summit Electric Supply Co., Inc., is incorporated in New Mexico and has a registered office located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because there is diversity of citizenship and the amount in controversy exceeds \$75,000.00.

17. This Court has personal jurisdiction over Defendants Angiel, Eaton and Summit because they conduct and solicit business in Texas, committed tortious acts within Texas, breached contracts and caused injury to Plaintiff in Texas. Each of these acts represents an independent basis for the exercise of personal jurisdiction.

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because Plaintiff's causes of action accrued in this district and a substantial part of the events giving rise to Plaintiff's claims occurred here. Venue is also proper pursuant to 28 U.S.C. §1391(b)(3), as Defendants are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

A. Atos Requested Breaker Repair

19. By Purchase Order 8164, dated January 5, 2013, from Plaintiff directed to its contractor, Angiel, Plaintiff requested a MSB-A generator main breaker refurbishment for Plaintiff's Arlington, Tarrant County, Texas location (the "Atos Arlington Data Center"). *See Exhibit A.*

20. On April 11, 2013, Defendant Eaton wrote to Defendant Summit regarding the reconditioning of the Westinghouse Type DSL 416 Power Circuit Breaker, being Eaton Corporation Negotiation OAK 4130L411-1. *See Exhibit B.* Eaton's proposal addressed to Summit for the reconditioning included a quotation work scope including Item 28 that the trip unit would set according to the customer's supplied setting.

21. On April 15, 2013, Steve Landsfeld with Summit agreed to refurbish, the defective breaker for \$6,620.00. *See Exhibit C.*

22. By letter dated April 16, 2013, Angiel advised Pat Jolly at Atos that Angiel would pick up the damaged MSB-A generator main breaker to have it refurbished for \$9,496.00. *See Exhibit D.*

23. After working on the breaker, Eaton provided a single page regarding "Reconditioned Low Voltage Breaker," and in its comments stated: "Replaced faulty spring release coil. Replaced cross thread bolt on aux switches. Replaced faulty closing switch. Trip unit set to customers (sic) specifications. Breaker passed all electric function tests as per Eaton procedure." *See Exhibit E.*

B. Atos Issue with Repaired Breaker

24. On December 6, 2013, Scott Huyck with Angiel ("Scott") sent an e-mail to Paul Atkinson with Angiel ("Paul") regarding a breaker issue at Atos. He stated that the 1600 amp breaker Eaton refurbished did not close. Specifically, while the springs were charging, pushing the close control button only made a bang and charged the springs again, without actually closing the breaker. Scott noted the only load on the breaker was the A side of UPS modules, and stated the necessity to troubleshoot the gears to see if it were a control issue or a breaker issue. Eaton's tech support was called to assist Angiel with the Atos issue.

25. On January 20, 2014, Scott wrote to Paul stating that Eaton needed to service the breaker as he noted that the main closing spring discharges when the breaker trips, which it should not do, and, in certain circumstances, it charges the spring multiple times before it holds.

26. On January 21, 2014, Paul e-mailed Steve Landsfeld (“Steve”) and Drew Esakov (“Drew”) with Summit requesting a technician to go to Atos as soon as possible to troubleshoot the problems with the rebuilt breaker.

27. Drew forwarded the e-mail string to Katie Eberhart (“Katie”) with Eaton and requested that an engineer be quickly dispatched to the Arlington site. Drew further advised that two Eaton employees were both familiar with the equipment. Later that day, Katie confirmed that Clark Gorsin with Eaton (“Clark”) would go out to the Arlington location that day.

28. About a week later, Paul followed-up with Drew and Scott asking for an update on the rebuilt breaker.

29. On January 29, 2014 Drew e-mailed Benjamin Judd with Eaton (“Benjamin”) to request that he update Paul on the Atos generator breaker inspection. Benjamin stated that Clark visited the site and reviewed the breaker. Clark received drawings from the customer earlier in the week that he had reviewed and was planning to return to the site to resolve the issue. Benjamin advised that if the determined fix is not related to the reconditioning, there may need to be something worked out to cover the time period.

30. On February 3, 2014 Steve e-mailed Benjamin requesting an update on what was found in Benjamin’s investigation, Benjamin advised Steve that the expected failure modes were tested and found to be working, and the breaker had been compared with the wiring diagram as well as the breaker from the lower cubical and everything seemed correct. He further advised that

the breaker is still not working as desired and that Clark is talking to the factory to get some new ideas. Finally, he advised that he would have to schedule another trip out.

31. About a week later, Paul e-mailed Benjamin for the latest information on the breaker. Benjamin said that Clark was scheduled to return with one of Eaton's other senior engineers. Benjamin assured Paul that the situation would get it sorted out this time.

32. Paul followed-up Benjamin's email, advising Benjamin that he needed to understand the Arlington facility is a large data center of a valued customer, and having to wait 25 days to get a solution was not acceptable. Paul requested that Clark and a senior engineer be on site the following day. Benjamin agreed to be there the next day.

33. On February 12, 2014, Benjamin e-mailed Paul advising that "this was resolved today." Benjamin's email states that the OTS switch in the breaker was the culprit and replaced. He stated that in static testing it tested okay, but that the resistance of the switch would fluctuate when vibrated, which is something that happens when the motor is charging the breaker.

C. Atos Data Center Dumped

34. On February 26, 2014, Paul e-mailed Benjamin, Steve, and Drew regarding the "ATOS rebuilt generator breaker failure," Paul advised Benjamin that Angiel closed the breaker to pick up the entire data center floor so that the A side UPS could come online, but, because the breaker was set at the minimum settings, not according to the original settings, the entire data center was dumped.

35. Paul concluded that at some point when the breaker was initially sent to Eaton in Houston or during Eaton's work on the breaker on-site, all of the trip settings were cranked down to minimum settings. Paul further stated that according to the "work scope" for this class of

breaker, once the breaker is received, all of the trip settings are noted so that when the breaker returns to service there is not a question for the coordination process.

36. Benjamin responded to Paul's email that Paul was correct, and "this is a part of the work scope for the reconditioning." Benjamin further stated he is not sure how the trip settings would be set at the minimum levels. He attached a copy of the test sheet for the breaker indicating the as-found and as-left settings for the breaker from the reconditioning shop in Houston, Benjamin further advised he would check to see if Eaton made any adjustments on the trip unit after the breaker was onsite and he would advise as to the results of those inquiries.

D. Damage to Atos

37. Because of the February 24, 2014 power outage at Plaintiff's Arlington Data Center, Plaintiff's preliminary investigation has uncovered damages of \$647,519.00 for time restoring systems, \$289,474.98 service level credit extended to the customer, \$35,000.00 demanded from Atos's customer, Republic, and an agreement to indemnify. *See Exhibit F.* Further, the City of San Diego, California notified Atos that it suffered \$299,241.08 as a result of the power outage. *See Exhibit G.* In total, Plaintiff has \$1,271,235.06 worth of damages directly caused by the failure of the breaker.

COUNT I

BREACH OF CONTRACT AGAINST ANGIEL, SUMMIT AND EATON

38. Plaintiff incorporates by reference the allegations set forth above as if the same were fully set forth herein.

39. All conditions precedent to the performance of Angiel, Summit and Eaton under the Contract have been met.

40. The contractual obligations of Plaintiff, have been fully performed.

41. Angiel, Summit and Eaton failed to perform their contractual obligations, specifically, Plaintiff, Angiel and Summit agreed that Summit would refurbish the breaker for \$6,620.00 according to the specifications provided by Eaton. Summit then provided the breaker to Eaton for that refurbishment work. As shown above, either in Eaton's Houston facility where the refurbishment originally took place or in Plaintiff's Arlington facility where further repairs were made by Eaton, Summit failed to refurbish the breaker and return the settings to the proper level. Angiel, Summit and Eaton breached their contracts on behalf of Plaintiff.

42. Angiel, Summit and Eaton's breach of contract described hereinabove caused Plaintiff to suffer damages in the amount of at least \$1,271,235.06 occasioned by the failure of the breaker.

43. Eaton, after the reconditioning the breaker in Houston, provided Angiel a single page regarding "Reconditioned Low Voltage Breaker," and in its comments stated: "Replaced faulty spring release coil, Replaced cross thread bolt on aux switches. Replaced faulty closing switch. Trip unit set to customers (sic) specifications. Breaker passed all electric function tests as per EATON procedure."

44. Once Angiel experienced issues with the breaker after receiving it from Eaton, Eaton represented to Angiel and Plaintiff that further repairs had been made and all problems were "resolved."

45. But due to Angiel, Summit and Eaton's breach of contract in failing to properly repair the breaker, Plaintiff has suffered damages.

COUNT II

**BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
AGAINST ANGIEL, SUMMIT AND EATON**

46. Plaintiff incorporates by reference the allegations set forth above as if the same were fully set forth herein.

47. Summit engaged Eaton to repair the breaker pursuant to Plaintiff's service request through Angiel. Angiel, Summit and Eaton knew the platform that Plaintiff would use the breaker for, and in connection with the repair, made an implied warranty regarding the suitability of the product for that use.

48. Plaintiff relied on the judgment of Angiel in contracting with Summit and Summit in selecting Eaton to provide a suitable refurbished and repaired product, but found that the product was unsuitable in that the product's failure caused the damage to the data center.

49. As a result of the product not being in conformance with the warranty, Plaintiff has suffered damages.

COUNT III

**BREACH OF WRITTEN EXPRESS WARRANTY IMPLIED WARRANTY AGAINST
ANGIEL, SUMMIT AND EATON**

50. Plaintiff incorporates by reference the allegations set forth above as if the same were fully set forth herein.

51. Eaton's "Reconditioned Low Voltage Breaker" report contained the following express warranty: "Replaced faulty spring release coil. Replaced cross thread bolt on aux switches. Replaced faulty closing switch. Trip unit set to customers (sic) specifications. Breaker passed all electric function tests as per EATON procedure."

52. The subsequent email between Angiel and Eaton after the breaker was at Plaintiff's location included the following express warranties: the issue "was resolved today."

53. The express warranties were false in that the breaker problems were not resolved and the unit was not returned to the customers specifications.

54. As a result of the breach of the express warranties, Plaintiff was damaged, including incidental and consequential damages.

COUNT IV

BREACH OF IMPLIED WARRANTY OF GOOD AND WORKMANLIKE MANNER AGAINST ANGIEL, SUMMIT AND EATON

55. Plaintiff incorporates by reference the allegations set forth above as if the same were fully set forth herein.

56. Summit had Eaton perform repair services on a breaker for Angiel on behalf of Plaintiff.

57. Those repair services could not be considered proficient by a person who has the knowledge, training, or experience necessary in the trade as those services did not refurbish or repair the breaker to the required specifications.

58. As a result of the breach of the implied warranties, Plaintiff was damaged, including incidental and consequential damages.

COUNT V

NEGLIGENCE LIABILITY AGAINST ANGIEL, SUMMIT AND EATON

59. The damages set out below were a direct and proximate result of the negligence of Defendants Angiel, Summit and Eaton in one or more of the following respects, or by combination thereof:

- a. Selection and monitoring of Angiel and Summit regarding the failure of the breaker or other systems of said switch and its attendant equipment after being refurbished and repaired by Eaton;
- b. Failure to ensure said breaker and its attendant equipment were operable after refurbishment and repairs;
- c. Failure of refurbish and repair the breaker to the required specifications;
- d. Failure to inspect the breaker, its component parts and/or attendant equipment for functional defects;
- e. Failure to use due care to service the switch so as to permit its safe operation, specifically including but not limited to the safe operation of the switch when used for the purpose and in the manner intended; and
- f. Representing the breaker was repaired when it was not.

All of which Defendants Angiel, Summit and Eaton knew, or in the exercise of ordinary care, should have known.

60. At all times material hereto, all of the agents, servants, and/or employees for Defendants Angiel, Summit and Eaton, who were connected with the occurrence made the subject of this suit were acting within the course and scope of their employment or official duties and in furtherance of the duties of their office or employment. Therefore, Defendants Angiel, Summit

and Eaton, are further liable for the negligent acts and omissions of its employees and agents under the doctrine of Respondent Superior.

61. Defendants' aforementioned conduct constitutes a careless, negligent, and reckless disregard of a duty of care for others.

62. Due to Defendants' breach of that duty, Plaintiff has suffered damages.

PRAYER FOR RELIEF

Plaintiff requests the following relief:

- a. A jury trial and judgment against Defendants Angiel, Eaton and Summit;
- b. General, actual, and compensatory damages in the amount of \$1,271,235.06;
- c. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- d. All costs and reasonable and necessary attorneys' fees incurred herein;
- e. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all claims so triable.

Dated: December 19, 2016

Respectfully submitted,

/s/ John D. Bosco

John D. Bosco, Esq.

Texas Bar No. 24045533

León Cosgrove, LLC

8117 Preston Road, Suite 300

Dallas, TX 75225

Tel: (305) 740-1975

Fax: (305) 437-8158

Email: jbosco@leoncosgrove.com

Email: jzinn@leoncosgrove.com

Email: kvasquez@leoncosgrove.com

Counsel for Plaintiff